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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

THOMAS FAN, MATTHEW KIMOTO, and
CLINTON BROWN, on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

NBA PROPERTIES, INC. and DAPPER LABS,
INC.,

Defendants.

Case No. 3:23-cv-05069-SI

**FURTHER JOINT CASE
MANAGEMENT STATEMENT**

Date: June 6, 2025

Time: 3:30 p.m.

Location: Zoom

Judge: The Honorable Judge Susan Illston

Counsel for Plaintiffs Thomas Fan, Matthew Kimoto, and Clinton Brown (collectively, “Plaintiffs”) and Defendants NBA Properties, Inc. (“NBAP”) and Dapper Labs, Inc. (“Dapper”) (collectively, “Defendants”) submit this joint further case management statement pursuant to the Court’s May 6, 2025 order (ECF No. 102). The parties incorporate by reference their prior case management statement and add the following:

1. Settlement

The Parties participated in a full-day mediation with Judge Wayne Andersen (Ret.) of JAMS on May 27, 2025. The case did not settle at the mediation, but the Parties are continuing to work on resolution of this matter with Judge Andersen.

2. Status of Discovery

The Parties have completed a substantial amount of written and deposition discovery. The Parties have largely completed their document production, all three Plaintiffs have been deposed, and four of Defendants’ witnesses have been deposed. Three additional Defense witnesses are scheduled to be deposed before June 18.

a. Plaintiffs’ Statement

Months ago, Plaintiffs also served document and depositions subpoenas to Meta. In response Meta produced spreadsheets of the video consumption history it had received from nbatopshot.com for all three Plaintiffs, as well as a declaration authenticating these spreadsheets. Meta also produced deposition testimony from a prior case detailing how it could identify class members based on their email addresses on May 1, 2025.

On May 20, 2025, Defendants notified Plaintiffs they objected to the use of that deposition testimony in this case, and so, on the same day, Plaintiffs served Meta with another deposition subpoena seeking to elicit that very same testimony. Defendants then objected to that deposition. The Parties are meeting and conferring, and may file a letter with the Court. Meta, for its part, has not yet objected to the May 20 subpoena, and Plaintiffs and Meta are meeting and conferring on a mutually agreeable production that would satisfy Plaintiffs’ need for relevant evidence. Defendants, for their part, despite complaining about not being present at any depositions of Meta when

1 testimony it presumably views as unfavorable came out, has not once itself made use of Rule 45 and
2 subpoenaed Meta.

3 **b. Defendants' Statement**

4 The parties met and conferred in person on May 30, 2025 regarding Plaintiffs' document
5 and deposition subpoenas to Meta. Shortly thereafter, Plaintiffs withdrew their May 27 document
6 subpoena to Meta. Plaintiffs' May 20 deposition subpoena to Meta is the only remaining point of
7 disagreement between the parties. Brief background regarding the Meta deposition subpoena may
8 be helpful for the Court.

9 In response to an earlier deposition subpoena from Plaintiffs to Meta, which Plaintiffs
10 ultimately withdrew, Plaintiffs received from Meta excerpted deposition testimony from an
11 unrelated case involving different parties purporting to detail how Meta could identify class
12 members based on their email addresses. Plaintiffs provided the excerpted testimony to Defendants
13 on May 1, 2025. On May 20, 2025, after analyzing the excerpt and the propriety of its use,
14 Defendants notified Plaintiffs by letter that Defendants would move to strike the excerpted
15 deposition testimony as improper and inadmissible under Federal Rule of Civil Procedure 32 and
16 Federal Rules of Evidence 801 and 802. Plaintiffs then served Meta with a new deposition subpoena
17 later that afternoon noticing a deposition on June 2. Defendants sought a date certain when the
18 deposition would occur and said they were available on June 2. On May 29, Plaintiffs informed
19 Defendants that Plaintiffs and Meta agreed to hold the deposition in abeyance until June 9 while
20 Plaintiffs attempt to negotiate the deposition subpoena with Meta, presumably to withdraw the
21 subpoena once again should Plaintiffs reach a unilateral agreement with Meta regarding alternative
22 testimony and/or declarations. Defendants requested again during the May 30 meet-and-confer that
23 Plaintiffs provide a date certain when the Meta deposition would occur with reasonable advance
24 notice. Defendants also reserve their rights to (1) object to any declaration or prior testimony
25 Plaintiffs may obtain from Meta and (2) seek their own deposition testimony and/or from Meta
26 should Plaintiffs' deposition of Meta not proceed.

27 **3. Scheduling**

28 Plaintiffs' Motion for Class Certification is due on July 15, 2025. Defendants' opposition is

1 due on August 19, 2025. Plaintiffs' Reply in Support of the Motion for Class Certification is due
2 on September 5, 2025. The Motion for Class Certification is currently set for hearing on October
3 10, 2025.

4 Dated: May 30, 2025

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28 ¹ The filer of this document attests that the other signatory has concurred in the filing of this document, pursuant to N.D. Cal. L. R. 5-1(i)(3).

SIGNATURE ATTESTATION

Pursuant to Civil L.R. 5-1(i)(3), the filer of this document attests that all signatories have concurred in its filing.

By: /s/ Stefan Bogdanovich
Stefan Bogdanovich